

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6372 of 1996

For Approval and Signature:

HON'BLE MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

HEMENDRA VISHNUPASAD JANI

Versus

BARODA MUNICIPAL CORPORATION

Appearance:

1. Special Civil Application No. 6372 of 1996
MR RAMNANDAN SINGH for Petitioners
MR PRASHANT G DESAI for Respondent
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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
Date of decision: 21/10/2004

ORAL JUDGEMENT

The petitioners, daily-wage labourers employed by

the respondent-Baroda Municipal Corporation [hereinafter referred to as, "the Corporation"] seek appointment as Clerk in the Corporation.

It is the claim of the petitioners that the petitioners are educated persons. The petitioner no. 1 has passed Second Year B.Com examination conducted by the Gujarat University and the petitioner no.2 possesses a Degree in Commerce. Though the petitioners were engaged as daily wage labourers in the year 1984 in the Electricity Department of the Corporation, having regard to their educational qualification, they were assigned duties of a Clerk. From the very inception of their service, the petitioners discharged clerical duties. Pursuant to the award of the Industrial Tribunal in Reference (IT) No. 146 of 1976, on completion of 720 days' as daily wage labourer, the petitioners have been regularized in service of the Corporation. The petitioners, however, demand that as they are educated and eligible for appointment as Clerk and as they have been performing duties of a Clerk, they should be appointed as Clerk. The petitioners have also relied upon a precedent in case of one Neelaben N. Dani and Jayesh J. Trivedi. According to the petitioners, the said Neelaben and Jayeshbhai though were daily wage helpers, considering their educational qualification, they have been absorbed in the service of the Corporation as Clerk.

The petition is contested by the Corporation. It is stated that the appointment to the posts in the Corporation are made in accordance with the recruitment rules made for each cadre. Appointment to the post of Clerk in Class-III service is required to be made either by direct selection or by promotion of Class-IV servants. 10% of the vacancies in the cadre of Clerk are reserved for appointment by promotion from amongst Class-IV servants. The petitioners are daily wage labourers. They have no right to appointment to the post of Clerk except in accordance with the aforesaid two modes. The demand made by the petitioners is contrary to the rules and cannot be accepted. The appointments referred to by the petitioners were made by promotion of Class-IV servants as Clerks against the 10% of the vacancies reserved for appointment by promotion. With respect to the aforesaid two employees viz. Neelaben N. Dani & Jayeshbhai Trivedi, it is stated that the said two persons were appointed as daily wage Clerk. On completion of 720 days' service, they were regularized in service as Clerk.

In view of the above facts, it is clear that the demand made by the petitioners is contrary to the rules of appointment to the post of Clerk. Precedents referred to by the petitioners are also not comparable as the petitioners were not appointed as daily wage Clerk. They cannot claim regularization in service as Clerk nor are their cases comparable with the cases of the said Neelaben Dani & Jayesh Trivedi. As to the appointment of other Class-IV servants as Clerk by promotion, the same cannot be said to be in contravention of the rules as 10% of the vacancies in the cadre of Clerk are reserved for appointment by promotion of Class-IV servants. Even otherwise, in case the petitioners are not entitled to appointment as Clerk, the same cannot be claimed by invoking the principle of equality contained in Articles 14 & 16 of the Constitution. The petitioners' demand, being contrary to the rules, is misconceived and requires to be rejected.

In view of the above discussion, the petition is dismissed with cost. Rule is discharged.

{Miss R.M Doshit, J.}

Prakash*